

**GOVERNMENT OF PUERTO RICO
PUBLIC SERVICE REGULATORY BOARD
PUERTO RICO ENERGY BUREAU**

IN RE: TEMPORARY REVIEW OF THE
PERMANENT RATES OF THE ELECTRIC
POWER AUTHORITY

CASE NO.: NEPR-AP-2025-0002

SUBJECT: Determination on LUMA's Petition to
Implement Temporary Rates.

RESOLUTION

I. Introduction

On May 22, 2025, LUMA Energy, LLC ("ManagementCo"), and LUMA Energy ServCo, LLC ("ServCo"), (jointly referred to as "LUMA") submitted a document titled *Motion Submitting Temporary Rate Adjustment Petition* ("Petition"). As authorized by Section 6.25(d) of Act 57-2014, as amended,¹ LUMA requests approval of what Section 6.25(d) calls an "electric power service rate adjustment due to emergency or temporary events." The proposed adjustment would collect \$352 million beginning June 1, 2025, with \$332 million annualized and \$30 million collected over three months. The Petition, accompanied by several exhibits and the pre-filed testimony of LUMA's Chief Financial Officer and Chief Regulatory Officer, proposed two riders that would collect revenue from customers for the following elements:

- Inflation increases to the FY 25 budget (\$23.8M)
- Replacement of the Puerto Rico Public Private Partnerships Authority's ("P3A") supplement to the FY 25 budget (\$44M)
- Replenishment of the T&D OMA's Outage Reserve Account (\$30M)
- "Incremental costs for high-priority and non-controversial items" (\$254M: \$67.7 for O&M; \$186.3M for nonfederal capital expenditures)

II. Statutory Authority

The Energy Bureau derives its authority to decide the instant petition from several interlocking statutes that together confer both the power to set electric-service rates and the responsibility to ensure that any request for extraordinary relief is complete, duly supported, and consistent with the procedural safeguards prescribed by Puerto Rican law.

Act 57-2014 vests the Energy Bureau with exclusive regulatory jurisdiction over electric-service companies, including the power to "adopt the rules, orders and regulations needed to carry out its duties" and to "establish... just and reasonable rates." Section 6.25(a) expressly delegates those functions to the Energy Bureau. Section 6.25(d) of Act 57-2014 provides that the Energy Bureau may authorize temporary rate adjustments due to emergency or temporary events. Such requests must be accompanied by documentation warranting the adjustment. The Energy Bureau must make a "preliminary determination authorizing or rejecting" the request (a determination that must be "duly grounded") within ten days of the request. If the Energy Bureau's preliminary determination approves the request, the adjustment may go into effect at that time. Then the Energy Bureau must hold public hearings (including both public participation and technical evidence) within thirty (30) days of the effective date of the temporary rate adjustment. The Energy Bureau must issue a final determination within sixty (60) days after the hearing process ends. Temporary rate adjustments cannot exceed 180 days.

¹ Section 6.25(d) provides in relevant part:

At the request of an electric power company, the Bureau may authorize an electric power service rate adjustment due to emergency or temporary events. Such request must be accompanied by all the documentation and information available that, in the judgment of the electric power company requesting it, warrants the temporary rate adjustment.



For matters that implicate the Puerto Rico Electric Power Authority (“PREPA”), an analogous grant of power appears in Article 6A(d) of Act 83-1941, which permits the Energy Bureau to approve “a rate modification due to emergency circumstances, as provided in Act 21-1985,” and likewise limits the duration of an emergency rate to 180 days.

Collectively, these provisions confer on the Energy Bureau full legal authority to examine the Petition and determine whether it satisfies the statutory requirements for a temporary or emergency rate adjustment.

III. Applicable Legal Standard

Neither Act 57 nor Act 83 defines the phrases “emergency” or “temporary event.” In *Meléndez Ortiz v. Valdejully*,² the Puerto Rico Supreme Court held that both terms embrace circumstances in which a utility faces an imminent inability to satisfy its legal and financial obligations. The Court identified as paradigmatic reasons for temporary relief the need to avert reductions in maintenance programs, prevent lay-offs, and preserve financial stability so the utility may continue in operation.³ The Court further emphasized that the statute’s purpose is to protect customers from service deterioration “regardless of the acts of the utility,” and therefore the regulator must act swiftly when a grave threat materializes.⁴

Drawing on that precedent, the Energy Bureau interprets the phrase “emergency or temporary event,” as used in Section 6.25(d) of Act 57-2014, to require a two-stage analysis. First, the applicant must establish that the precipitating circumstance qualifies as an *emergency or temporary event*. Second, it must demonstrate that the proposed charge is *just, reasonable, and no more than necessary* to address the emergency, with the burden of proof resting on the utility throughout the proceeding.

A. Nature and severity of qualifying events

An event will be deemed “emergency” or “temporary” when it creates an urgent threat of service degradation or financial collapse that cannot await resolution through the ordinary rate-case calendar. Consistent with *Meléndez Ortiz*, three broad classes of circumstance satisfy this standard:

Financial crises constitute qualifying events when they threaten the utility’s ability to continue essential operations. Such crises encompass situations involving imminent insolvency or the inability to meet critical contractual obligations that are fundamental to the utility’s operations or legal commitments. Financial emergencies also include severe cash flow shortfalls that directly jeopardize service reliability or safety, as well as the sudden loss of expected funding sources that are essential for maintaining normal operations. Additionally, a utility’s inability to access capital markets due to extraordinary circumstances may constitute a financial crisis warranting emergency rate relief.

Operational threats qualify as emergency or temporary events when they imminently endanger system reliability, safety, or the utility’s capacity to fulfill its public service obligations. These threats include equipment failures or infrastructure damage that require immediate and substantial capital expenditure to prevent service disruption or safety hazards. Operational emergencies also encompass regulatory or legal mandates that impose unexpected and significant financial obligations with immediate compliance requirements.

External shocks represent another category of qualifying events. Natural disasters that cause extraordinary operational costs or significant revenue losses may create emergency conditions requiring immediate rate relief. Similarly, pandemic-related impacts that substantially affect operations or financial condition can constitute temporary events

² *Meléndez Ortiz v. Valdejully*, 120 DPR 1 (1987).

³ *Id.*

⁴ *Id.*



warranting expedited regulatory response. Market disruptions that create severe cost increases or revenue shortfalls, particularly when such disruptions are sudden and beyond the utility's ability to mitigate through normal operational adjustments, may also qualify as external shocks justifying temporary rate adjustments.

B. Threshold Requirements

For an event to qualify under Section 6.25(d), it must satisfy the following threshold requirements:

Imminence: The threat must be current or highly probable in the immediate future, not speculative in likelihood or remote in time. The potential harm to utility operations, financial viability, or public service must be demonstrably imminent.

Severity: The event must pose a substantial threat to the utility's core functions, with potential consequences that would materially impair service reliability, safety, or the utility's ability to meet its legal and contractual obligations.

Urgency: The situation must demand expeditious regulatory response that cannot be adequately addressed through standard rate review processes, even with provisional rates under Section 6.25(e).

Only when competent, verifiable evidence demonstrates that all three elements are met may the Energy Bureau reach the second stage—quantifying a charge that is narrowly tailored to the emergency, temporary in duration, and subject to refund if ultimately unwarranted. Failure to satisfy any element compels denial or dismissal, consistent with the Energy Bureau's duty under Act 57-2014 to ensure "the operation and administration of an efficient system at just and reasonable costs."

IV. Findings of Fact

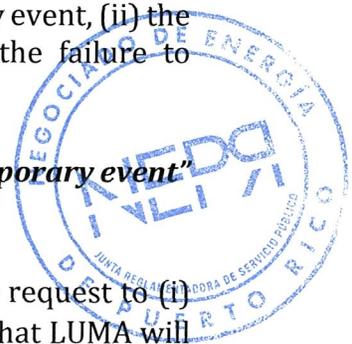
The Energy Bureau has examined the entire record of the instant procedure. That record consists of the Petition which encloses the testimonies of the Chief Regulatory Officer and the Chief Financial Officer; the draft tariff sheets for the proposed TEMP and OUT riders; the pro-forma revenue-requirement schedules and associated working papers; the bill-impact exhibits; and the other materials annexed to, or incorporated by reference in, the filing.

Under Section 6.25(d) of Act 57-2014 the burden of production and persuasion lies with the utility. The applicant must establish, with competent and verifiable evidence, both the existence of an emergency or temporary event and the necessity and reasonableness of the rate relief sought. In keeping with that statutory allocation, the Energy Bureau has scrutinized each element of the Petition to determine whether it satisfies the threshold requirements set forth in the Applicable Legal Standard. Where the documentary record is silent, equivocal, or otherwise insufficient to sustain a required element, the Energy Bureau cannot supply the missing proof by presumption or by recitation of conclusory assertions offered by the applicant.

The factual findings set out in the subsections that follow reflect this rigorous review. They identify (i) the absence of evidence demonstrating an emergency or temporary event, (ii) the applicant's use of criteria unrelated to the statutory standard, and (iii) the failure to substantiate the request to replenish the Outage Event Reserve Account.

A. The submission contains no evidence that an "emergency or temporary event" exists.

LUMA asks to collect an annualized \$352 million. The petition attributes the request to (i) ordinary inflation, (ii) the fact that new revenues from the provisional rates that LUMA will propose on July 3, 2025 will not start flowing until September, 2025, (iii) the outdated nature



of base rates last set in 2017, (iv) PREPA's inability while in bankruptcy to obtain external financing, and (v) the general "fragile" condition of the transmission and distribution system. The Energy Bureau agrees that these factors exist. The problem is that LUMA does not tie any of these factors to a discrete occurrence that imminently threatens service reliability or financial solvency. LUMA thus fails to show that the requested spending is "necessary due to emergency or temporary events," leaving the Energy Bureau unable to determine that the request is "duly grounded" as required by section 6.25(d).

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The planned installation of point-of-sale ("POS") substation meters, described in the Temporary Rate Revenue Requirement narrative under "Substation Rebuilds," is a good illustration of a cost that, at some level, plainly belongs in the permanent-rate case budget yet does not meet the statutory threshold for an emergency surcharge. The POS meters will give LUMA a precise "energy in" baseline, allowing systematic tracking of "energy out" at feeders and, ultimately, identification of non-technical losses (theft). Accurate boundary metering is the indispensable first step in any loss-reduction program; without it, the utility cannot quantify or localize theft, nor verify the success of remedial actions. However, delaying the meters would not create an imminent threat to system safety or reliability; the grid will still operate tomorrow if the meters are procured next quarter instead of this one. The value of POS metering lies in long-run revenue protection and regulatory transparency—not in averting an immediate operational collapse. Accordingly, the POS-metering project should seek funding through the regular revenue-requirement determination in the permanent rate case, alongside other non-controversial grid-modernization investments aimed at reducing losses and improving accountability, rather than through the proposed temporary emergency rate.

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B. LUMA substitutes the Energy Bureau's "high-priority and non-controversial" budget filter for the statutory concept of an emergency.

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The petition describes the proposed investments as "critical," "high priority," and "noncontroversial." But these labels arise from the Energy Bureau's April 21, 2025 procedural ruling governing what costs may be included in a *provisional*-rate filing. LUMA offers no explanation why those administrative labels would satisfy—or even relate to—the legal definition of an emergency or temporary event under Section 6.25(d). By conflating the two concepts, the filing seeks to obtain what amounts to provisional rates through the drastically abbreviated procedures reserved for emergencies, thereby bypassing the evidentiary safeguards of a full rate case.

C. Funding the Outage Event Reserve Account is a contractual obligation, not necessarily a statutory emergency; LUMA has not demonstrated an inability to address outages without it.

The Transmission & Distribution O&M Agreement (T&D OMA) obliges PREPA to maintain a \$30 million balance in the Outage Event Reserve Account. LUMA asserts that PREPA has not replenished the account since November 2023 and that storm season is approaching, but provides no contemporaneous balance sheet, claims history, or actuarial analysis to show that available cash or existing reserves are inadequate to cover near-term storm response. Nor does the filing show that LUMA (or PREPA) lacks alternative liquidity—such as redirected O&M funds, existing credit facilities, or short-term borrowing authority—to meet outage costs on an interim basis. A contractual funding covenant, standing alone, does not transform an unfulfilled payment into an "emergency or temporary event," and the petition offers no evidence that the utility will become imminently unable to restore service without immediate tariff relief.



M In the ongoing rate case proceeding the Energy Bureau already established a filing requirement to create a cost rider for storms, the Major-Storm Costs Rider.⁵ If a natural disaster occurs during the period when the Energy Bureau is considering this Rider in the ongoing rate case, LUMA may still request an emergency rate adjustment under Section 6.25(d). The Rate Case proceeding is the appropriate venue in which to consider the establishment of a Major-Storm Cost Rider. In addition, necessary reserve funds for emergencies will be among the immediate needs considered in the development of a provisional rate. The Energy Bureau will expeditiously address the emergency needs that LUMA asserts, and any immediate financial needs that Genera and PREPA present and support. The solution the Energy Bureau develops will address system wide emergency needs, and through the rate case process, all statutory and due process considerations.

dm If an extraordinary event requiring immediate attention occurs, such as a natural disaster, for which the Outage Reserve Account does not contain adequate funds, LUMA is not precluded from filing a rate revision petition on an emergency basis with the Energy Bureau. If events do not necessitate LUMA's filing of such a petition, immediate financial needs of the electric system will be expeditiously addressed in the rate case.

JAB **D. The emergency needs of the electric system**

dm The Energy Bureau reminds LUMA that it operates within a unified electric system where serious contingencies can justify an emergency-rate petition. Accordingly, when the Energy Bureau evaluates a request for emergency or temporary rates it must look not merely to LUMA's transmission-and-distribution activities, but to the condition of the entire electric enterprise—including PREPA's obligations and Genera PR, LLC ("Genera") near-term generation requirements—because a failure in any one component jeopardizes service everywhere on the Island.

dm LUMA's narrow vision on system-wide contingencies underscore a fundamental weakness in the petition: it treats "emergency" as a condition that can be evaluated in isolation from the obligations and risks borne by PREPA and Genera.

V. Rejection of Petition

The Energy Bureau rejects the Petition as deficient, because LUMA has not shown that the elements of its proposed spending are necessary "due to emergency or temporary events." While the Petition references general case law on the concept of "emergency," it nowhere defines "emergency" in terms specific to Puerto Rico's electricity system. Merely quoting the case law's general discussion of the term, without applying that discussion to specific facts, provides insufficient guidance by which to judge whether LUMA's proposed spending categories address actual electricity system emergencies.

Separately and fundamentally, LUMA errs by substituting for a definition of "emergency" the Energy Bureau's criteria of "high priority" and "noncontroversial." The Energy Bureau used those criteria not to define "emergency" for purposes of emergency rates, but rather to limit what LUMA could include in its request for provisional rates.⁶ The criteria of "high priority" and "noncontroversial" are not synonymous with "emergency," and have no necessary connection to "temporary events."

The Petition seeks emergency-rate treatment for what is a provisional rate, which is the basis for a permanent-rate request. But a permanent-rate request requires formal adjudication, with all formal adjudication's evidentiary rigor and procedural protections. An emergency

⁵ See *In re: Puerto Rico Electric Power Authority Rate Review*, Case No.: NEPR-AP-2023-0003, Resolution and Order issued on February 27, 2025.

⁶ See *In Re: Puerto Rico Electric Power Authority Rate Review*, Case No.: NEPR-AP-2023-0003, Resolution and Order issued on April 21, 2025, p. 6.



rate, in contrast, goes into effect if the Energy Bureau does no more than find that the request is “duly grounded.” **To approve what amounts to a permanent rate using procedures established for emergency rates is unlawful.**

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The rejection of the Petition on grounds of legal and factual deficiency does not eliminate LUMA’s right—and duty—to seek a rate adjustment for an emergency or a temporary event. Should LUMA choose at some point to submit a new application—one that rigorously associates specific expenditures with the statutory terms and with a specific period that ends with the time when provisional-rate revenues flow—the Energy Bureau will address it within the ten days required by the statute.

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VI. Conclusion

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Section 6.25(d) of Act 57-2014 allows emergency or temporary rates only when a discrete event poses an imminent threat to reliability or solvency and the utility proves, with competent evidence, that its proposed charge is strictly limited to resolving that threat. Parts III through V of this Order show that LUMA has met neither requirement. The Petition identifies inflation, a timing gap between the start of the fiscal year and the effective date of provisional rates, and the grid’s generally “fragile” condition, but none of these circumstances constitutes the sort of sudden, extraordinary occurrence that would justify immediate tariff action. The requested \$352 million, including \$30 million for the Outage Event Service Account, is defended merely as “high-priority” and “non-controversial” spending—administrative labels that have no bearing on the statutory concept of an emergency. Even if LUMA had no access to the Outage Event Reserve, LUMA could still pursue a targeted emergency rate revision petition with the Energy Bureau if a real emergency, such as a natural disaster, occurs. Because LUMA has neither proven the existence of an emergency or temporary event nor shown that its proposed charge is necessary, narrowly tailored, and reasonable, the statutory test for expedited relief is not satisfied.

The Energy Bureau therefore **DENIES**, without prejudice, the Petition and encourages LUMA to provide well-documented supporting material to justify the inclusion of a potential Major-Storm Cost rider as specified in the resolution and order notified on February 27, 2025 in Case No. NEPR-AP-2023-0003 *In re: Puerto Rico Electric Power Authority Rate Review*.

The Energy Bureau **WARNS** LUMA that in accordance Art. 6.36 of Act 57-2014:⁷

- (i) noncompliance with this Resolution and Order, regulations and/or applicable laws may carry the imposition of fines and administrative sanctions of up to one hundred twenty-five thousand dollars (\$125,000) per day; and
- (ii) for any recurrence of non-compliance or violation, the established penalty shall increase to a fine of not less than fifteen thousand dollars (\$15,000) nor greater than two hundred fifty thousand dollars (\$250,000), at the discretion of the Energy Bureau.



⁷ Known as the *Puerto Rico Energy Transformation and RELIEF Act*, as amended (“Act 57-2014”).

VII. Judicial Review

NOTWITHSTANDING THE ENERGY BUREAU'S DETERMINATION IN PART VI, IF LUMA CONSIDERS THAT THIS RESOLUTION IS SUBJECT TO JUDICIAL REVIEW, IT MAY SEEK SUCH REVIEW BEFORE THE COURT OF APPEALS IN ACCORDANCE WITH THE GENERAL PROVISIONS OF ACT 38-2017 AND ACT 57-2014⁸, AND IT SHALL HAVE THIRTY (30) DAYS FROM THE DATE OF NOTIFICATION OF THIS RESOLUTION TO FILE A PETITION FOR JUDICIAL REVIEW.

The issuance of this cautionary notice does not imply that the Energy Bureau considers this Resolution to be subject to review at this time before the Court of Appeals, nor does it constitute a waiver of its right to challenge the Court of Appeals' jurisdiction should the situation arise. This cautionary notice is provided to inform LUMA of the appropriate forum in which determinations of the Energy Bureau are generally subject to review, as well as the applicable term within which such review may be sought, where appropriate.

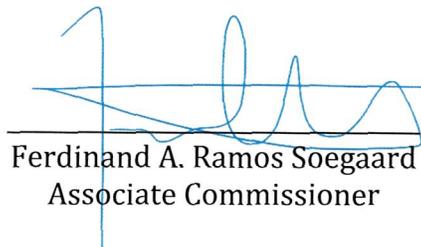
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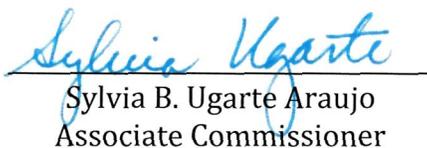
Edison Avilés Deliz
Chairman



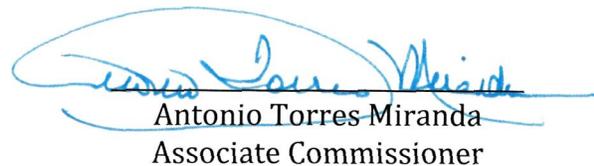
Lillian Mateo Santos
Associate Commissioner



Ferdinand A. Ramos Soegaard
Associate Commissioner



Sylvia B. Ugarte Araujo
Associate Commissioner



Antonio Torres Miranda
Associate Commissioner

CERTIFICATION

I hereby certify that the majority of the members of the Puerto Rico Energy Bureau has so agreed on May 29, 2025. I also certify that on May 29, 2025 a copy of this Resolution and Order was notified by electronic mail to margarita.mercado@us.dlapiper.com. I also certify that on May 29, 2025, I proceeded with the filing of the Resolution and Order issued by the Puerto Rico Energy Bureau.

I sign this in San Juan, Puerto Rico, on May 29, 2025.



Sonia Seda Gaztambide
Clerk

⁸ Article 6.5(c) of Act 54-2014 provides that in accordance with the provisions of Act 38-2017, the final decisions or resolutions of commissions in **adjudicative proceedings** shall be subject to review by the Court of Appeals of Puerto Rico. See also Article 6.20 of Act 57-2014.